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7 INFINITI RE, LLC
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9 UNITED STATES BANKRUPTCY COURT
10 EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION
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12 In re:

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16 ALLAN MANGAYAYAM,
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Debtor.

Case No. 2010-29657

Chapter 13

D.C. No. JMC-1

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND
MEMORADUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF
(11 U.S.C. § 362 and Bankruptcy Rule
4001)**

LBR 4001-1 and 9014-1(f)(1)

Date: May 25, 2010

Time: 9:31 a.m.

Place: Dept B, Courtroom 32

Judge: Thomas C. Holman

25 Sarah J. Link, Dennis Follain, and Infiniti RE, LLC ("Movants"), move this court for an
26 order terminating the automatic stay of 11 U.S.C. § 362 as to Movants, so that Movants may
27 commence and continue all acts necessary to enforce its interest in the real property generally
28 described as 4817 S. Ridgefield Way, Fairfield, California 94534.

1 On or about April 14, 2010, Allan Mangayayam (Debtor) filed a voluntary petition
2 under Chapter 13 of the Bankruptcy Code, and Jan P. Johnson was appointed Chapter 13
3 Trustee. As a result of said filing, certain acts and proceedings against Debtor and the
4 bankruptcy estate are stayed as provided in 11 U.S.C. § 362.

5 Movants move this court for relief from stay under 11 U.S.C. §§ 362(d)(1) and
6 362(d)(2).

7 **MEMORANDUM OF POINTS AND AUTHORITES**

8 **I.**

9 **MOVANTS ARE ENTITLED TO RELIEF FROM THE**
10 **AUTOMATIC STAY UNDER 11 U.S.C. § 362(d)(1)**

11 **“FOR CAUSE”**

12 11 U.S.C. § 362(d)(1) provides that upon request of a party in interest and after notice
13 and a hearing, relief from the automatic stay shall be granted for cause, including lack of
14 adequate protection of an interest of such party.

15 In In re Elmore, 94 B.R. 670, 678 (BC CD CA 1988), the court specifies that relief
16 from stay under § 362(d)(1) is not limited to lack of adequate protection because § 362(d)(1)
17 states that cause “includes” lack of adequate protection and therefore lack of adequate is not
18 the exclusive ground for finding “cause.”

19 11 U.S.C. § 541 (a) states in pertinent part that only “legal or equitable interests of the
20 debtor in property as of the commencement of the case” become property of the estate.

21 In In re Boyd, 107 B.R. 541, 542-543 (BC ND MS 189), the court found that a debtor
22 who filed bankruptcy after foreclosure sale concluded and a deed was recorded no longer had
23 any legal right in the subject property.

24 On January 7, 2010, Movants purchased the subject property at a prepetition trust deed
25 foreclosure sale against Debtor, the person under whom Debtor’s claim and the title was
26 perfected.

27 The Trustee’s Deed Upon Sale (hereinafter “Deed”) memorializing the January 7, 2010
28 sale of the subject property was recorded on February 4, 2010. A true and correct copy of the

1 Deed is attached to the concurrently served and filed Exhibits to the Declaration in Support of
2 the Motion for Relief From Automatic Stay ("Exhibits") as exhibit A and incorporated herein
3 by reference.

4 At the time of the sale, the Debtor, who is not a tenant of the prior owner—as is evident
5 by reference to the Debtor's Schedules and Statement of Financial Affairs—and therefore not
6 entitled to a 30-day notice, were in possession of the property and they have remained in
7 possession after the sale.

8 On January 27, 2010, Movants caused to be served on Debtor a written notice stating
9 that Movants had purchased the property and they their title had been duly perfected and
10 demanding that Debtor quit the premises within three days after service of the notice. A true
11 and correct copy of the notice is attached to the concurrently served and filed Exhibits to the
12 Declaration in Support of the Motion for Relief from Automatic Stay ("Exhibits") as exhibit B
13 and incorporated herein by reference.

14 On or about February 3, 2010, Movants caused to be filed and served on the Debtor a
15 Complaint for Eviction after Sale in order to gain possession of the subject property. A true
16 and correct copy of the complaint is attached to the concurrently served and filed Exhibits to
17 the Declaration in Support of the Motion for Relief from Automatic Stay ("Exhibits") as
18 exhibit C and incorporated herein by reference.

19 On March 23, 2010, at 9:00 a.m., Movants obtained a court judgment and writ of
20 possession after trial unaware that Debtors filed for Chapter 13 bankruptcy protection on
21 March 22, 2010, at 10:11 p.m.

22 II.

23 MOVANTS ARE ENTITLED TO RELIEF FROM THE 24 AUTOMATIC STAY UNDER 11 U.S.C. § 362(d)(2)

25 Pursuant to 11 U.S.C. § 362(d)(2)(A), Debtor has no equity in the subject property and
26 pursuant to § 362(d)(2)(B), the Property is not necessary to an effective reorganization.
27 Moreover, as explained herein Debtor has neither a legal nor an equitable claim to the subject
28 property.

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By reason of the foregoing, Movants are entitled to relief for stay under 11 U.S.C. § 362(d)(1), for cause and under 11 U.S.C. § 362(d)(2) because the Debtor has no equity in the subject property and it is not necessary for an effective reorganization.

1. Terminating the automatic stay of 11 U.S.C. § 362 to allow Movants to proceed under applicable non-bankruptcy law to enforce their remedies to obtain possession of the subject property;
2. Annulment of the stay so that the filing of the bankruptcy petition does not affect postpetition acts, as set forth in the concurrently filed Declaration;
3. That the Order be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United State Code; and
4. For such other and further relief as the court deems just and proper.

HILLMAN, LUCAS & JONES, P.C.

Motion for Relief from Automatic Stay